

Remarks

This Amendment and Response to Final Office Action is being submitted in response to the final Office Action mailed August 8, 2004. Claims 21 through 27 are pending in the Application. Claims 21 through 27 stand rejected. Specifically, claims 21 through 27 are provisionally rejected under the judicially created doctrine of obvious-type double patenting. Claims 21 through 27 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Hobson (U.S. Pat. No. 4,259,994) in view of Carpenter (U.S. Pat. No. 5,983,952). Additionally, Claims 21 through 27 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Sherrill (U.S. Pat. No. 3,721,273) in view of Applicant's Admission.

Rejection of Claims 21-27 Under Judicially Created Double Patenting:

On page 2, in numbered paragraph 4 of the Office Action, the Examiner rejected Claims 21-27 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the Claims 21-36 of co-pending application 09/747,529. The Examiner admits that the claims are not identical, but asserts that they are patently indistinguishable from each other because the jacquard loom recited in 09/747,529 and the dobby loom recited in this application can be used to produce the same simple fabric construction. This rejection is provisional because neither this application nor the co-pending application 09/747,529 is patented. In view of the fact that the co-pending application might be abandoned, it seems premature to submit a terminal disclaimer at this time. Should the Examiner indicate that the application would be allowable except for the double patenting rejection, then the undersign will submit a terminal disclaimer in quick fashion.

Objection to Claim 21

The Examiner has objected to the wording of claim 21 as being grammatically awkward. Applicant has amended claim 21 such that the offensive language is revised.

***Rejection of Claims 21-27 Under 35 U.S.C. 103(a) –
Hobson '994 in view of Carpenter '952:***

The Examiner has maintained the rejection of Claims 21-27 for reasons stated in the previous Office Action.

It should be pointed out that the United States Board of Patent Appeals and Interferences stated in their decision of Appeal No. 2004-1029 that both Hobson and Carpenter totally fail...

to disclose borders adjacent each edge of a towel or textile product and a central area within and surrounded by the borders, which central areal on one side of the wosel or textile product receives a graphic impression, an the failure of either of the applied patents to teach or suggest the particular color arrangement of the borders and central areas required in the claims.... [N]either the applied references nor the examiner provides an adequate factual basis to establish that the towel... on appeal or the textile product... would have been obvious to one of ordinary skill in the art at the time of appellant' invention. It follows that we will not sustain the examiner's rejection.... [T]he examiner has filed to establish a prima facie case of obviousness with regard to the claimed subject matter.

See BPAI Appeal No. 2004-1029, pages 4 through 5.

The fact that the present textile is produced on a dobby loom is the only substantive difference between the claim sets of the 09/747,529 application and the present application. Furthermore, the method of weaving played no part of the Board's

refusal to uphold the Examiner's rejection, such that the decision is directly applicable to the present case.

In light of the Board's decision, the Applicant is confused as to the Examiner's continued adherence to an objection that does not establish prima facie obviousness. The simple fact is that Hobson in view of Carpenter does not meet the obviousness test established in *Graham v. John Deere*. The Board has stated exactly that in the appeal of related application 09/747,529 having a similar claim set.

Rejection of Claims 21-27 Under 35 U.S.C. 103(a) – Sherrill et al. '273:

The Examiner has maintained the rejection of Claims 21-27 for reasons stated in the previous Office Action.

The Examiner states that it is irrelevant that the Sherrill et al.'s borders are printed onto the towel. This is simply untrue. Sherrill teaches a towel woven from a rayon thread and a cotton thread. The towel is specifically manufactured so that the rayon terry piles are on one side of the towel and the cotton terry piles are on the others side. Sherrill teaches printing on the rayon fibers only, since they have an increased absorption of the dyes, as is well known in the art. Therefore, the printing would appear only on one side of the towel. The reverse side of the towel would not have the alternate color pattern as claimed and required by the Applicant.

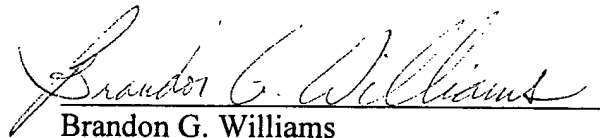
The Examiner states that the final product would be produced whether the border regions were woven into the fabric or printed onto the finished textile. By declaring that it is irrelevant whether the towel's border is woven or dyed, it would seem that the Examiner has either mischaracterized or does not understand the merits of the invention.

A woven border with a central area of a differing color is vital in achieving the benefits inherent in the current invention. By utilizing the specific color scheme, the

Applicant has created an article with a central light colored area, surrounded by a dark border. The reverse side of the article is a dark colored central area surrounded by a light colored border. A design can be printed in the light colored central area of the first side. The dark colored border surrounding the light central area is capable of masking any printed pattern that might overlap onto the border from the central area. This eliminates the need for precise alignment and monitoring that is mandatory in the preprinted filament process. Likewise, The dark central area on the reverse side of the article is capable of masking any potential bleed through of the printed design on the light colored central area of side one. This allows the Applicant to apply the printed image so as to result in a graphic that is more intensely colored than woven articles that are limited to a single front and rear color.

In view of the above remarks, it is submitted that the present application places the claims in condition for allowance and such is earnestly solicited. Should the Examiner, however, still be unpersuaded by these remarks and the Supplemental Affidavit, it is requested that the Examiner at least enter the Supplemental Affidavit for purposes of appeal.

Respectfully submitted,

A handwritten signature in cursive script, reading "Brandon G. Williams", written in dark ink over a horizontal line.

Brandon G. Williams
Attorney for Applicant
Registration No. 48,844
DOUGHERTY, CLEMENTS & HOFER
1901 Roxborough Road, Suite 300
Charlotte, North Carolina 28211
Telephone: (704) 366-6642
Facsimile: (704) 366-9744